

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 14th day of March 2006.

Original Application No. 357 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Narendra Kumar Sahu, S/o late Sri K.C. Sahu,
R/o House No. 284, Shahganj,
Distt: Allahabad

. Applicant.

By Adv: Sri D.K. Pandey

V E R S U S


1. Union of India through Secretary,
Ministry of Defence,
NEW DELHI.
2. Directorate General of Ordinance,
Services Master General of Ordinance Branch,
Army Headquarters,
NEW DELHI.
3. Commandant Central Ordinance Depot,
Chheoki, Naini,
ALLAHABAD.

. Respondents

By Adv: Sri V.V. Mishra

O R D E R

This is an unfortunate case. The applicant who on the one had lost the bread winner of the family has to support a family consisting of visually handicapped brother and sister. His repeated attempts to secure compassionate appointment had not met with success.

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2. This Tribunal had earlier directed the DGOS to look into the matter personally and now the

rejection letter is from the very DGOS, vide communication dated 23rd October, 2005. This contains reference of the earlier orders of the Tribunal including the one passed on 16th September, 2005.

3. What is the extent of judicial intervention in matters of Compassionate Appointment? If the respondents strictly follow the rules and come to the conclusion that a particular applicant is not found deserving for compassionate appointment, can the Court overrule the same and direct the respondents to offer him an employment? Certainly not. This Tribunal can only act within the four corners of the rules and regulations and watch whether such rules and regulations, whose vires have not been challenged have been followed and the equality clause enshrined in the Constitution under Art. 14 and 16 are not violated. Since the rules do not provide for any extra weight if dependents are physically challenged, the respondents could not do anything better than reconsidering within the parameter provided for as per the rules and arrive at a conclusion.

4. Only one scope is left. In a very recent case, *Govind Prakash Verma v. LIC of India*, (2005) 10 SCC 289, the Apex Court has held that payment of terminal benefits cannot be a bar to offer

compassionate appointment. The judgment is reproduced below:

"2. This appeal is preferred against the judgment and order passed by the Patna High Court, refusing the relief of compassionate appointment to the appellant on the death of his father during the course of employment. The learned Single Judge mentioned in the order, the factors which were taken into account by the Senior Divisional Manager refusing the appointment, that the widow of the deceased gets monthly pension of Rs 4735, apart from the terminal benefits which were paid to her, namely, gratuity, PF, additional gratuity, etc. According to the conclusions of the officer, as quoted in the judgment of the learned Single Judge, it is sufficient for the maintenance of the family.

3. It appears that during the course of the proceedings the learned Single Judge had required that some officer of LIC may make enquiries into certain aspects of the matter, which we find enumerated in the order dated 25-2-2002. The learned Single Judge observed as follows:

"It is, therefore, essential to further investigate as to whether the members of the family engaged in gainful employment were also supporting the family of the deceased employee or he was living separately and independently and the other members of the family of the deceased did not receive his help or sustenance from his gainful employment. Unless this aspect of the matter is also looked into, the provision of sub-rule (iii) of Rule 212 will lose its significance and as noted above it will not fully serve the purpose of the scheme. In the case in hand though it was admitted that the elder brother of the petitioner was gainfully employed in cultivation, it was also stated that he was living separately from the other family members."

4. In pursuance of the said order an officer of LIC appears to have made some enquiry and submitted his report dated 27-4-2002. In the report, he repeats about the family pension which is being paid to the widow of the deceased and the amount which was received as terminal benefits admissible under the Rules. Thereafter, it is mentioned in the report that the elder brother of the complainant is engaged as a painter but he did not disclose his income. Earlier, it is mentioned that he had said that he was engaged in cultivation. The officer inferred that the employment of the elder son of the deceased was being concealed. He also observed that at some

places the statement of the elder brother was contradictory. Ultimately, the officer deputed to make enquiries, comes to the conclusion: "Because of the contradictory nature of statements made by the elder son as also the facts mentioned above the appointment of Govind Prakash Verma on compassionate ground is not maintainable." It is a brief report containing the above conclusions. There is no report in regard to other factors which the learned Single Judge had indicated in his order, upon which also he was required to submit his report. There is specific mention of the case of the appellant in the order saying that the elder brother was engaged in cultivation and was living separately. But the officer who seems to have enquired into the matter, in pursuance of the order of the learned Single Judge, totally omitted to furnish any report on the points, indicated above, as required by the High Court. They seem to be obsessed by the fact that the widow of the deceased is getting family pension and some good amount was paid to them as terminal benefits. The learned Single Judge while passing the final order takes those factors into account, namely, the family pension and other amounts which had been received as terminal benefits of the service and it is said that since the authorities have arrived at certain findings it would not be appropriate to go into those matters, thus he accepted the same and dismissed the petition.

5. In writ appeal, the Division Bench found that no infirmity was shown in the order passed by the learned Single Judge, hence, the writ appeal was dismissed.

6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference

drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.

7. In the result, the appeal is allowed and the orders passed by the High Court are set aside. The respondents on consideration of the request of the appellant for compassionate appointment, shall pass appropriate order in the light of the observations made above, within a period of three months from today"

(Emphasis supplied).


5. The Government, while framing the policy on compassionate appointment seems to have lost sight of certain important factors. These are as under:-

- (a) While considering the terminal benefits and pension (if the Govt. feels that the same is justified even after the delivery of the above cited judgment), what is to be seen is not the mere total quantum paid to the family of the deceased. There may be cases where the family would have spent a huge amount (by borrowing) on the medical treatment of the deceased during his life time which the family had to repay. The deceased, it is possible, would have left a huge debt behind him, which it is only the family that has to liquidate and the terminal benefit is the lone source to

bank upon for such liquidation. For, social respect to the family would be in tact when the family repays such debts. Hence, while taking into account the extent of terminal benefits, it must be ensured as to what is the balance available with the family at the time of applying for compassionate appointment and whether the amount withdrawn from out of the terminal benefits was satisfactorily accounted for.

(b) There is no consideration for the present status of the family members. More often than not, the Tribunal comes across cases where one or more of the family members happens to be either physically/visually challenged or even mentally retarded. To maintain such individuals, the expenses would be more than maintaining otherwise a healthy dependent. The authorities are to consider the same.

(c) The limitation in the number of vacancies earmarked for compassionate appointment is understandable. 5% of the direct recruit vacancies may not perhaps be increased, as the same together with other quota should be restricted to that level as provided for by the Apex Court in various judgments. However, one aspect could well be considered by the Government. Though descendants cannot be a consideration in matters of



employment, borrowing the spirit of compassionate appointment, that the family of the deceased may be provided some assistance, in matters of employment in Group C or D, other things being equal, preference may be given to the wards of deceased government employees in the same Ministry or Department. This would to a substantial extent, give relief to the families of the deceased employees.

6. Hon'ble Justice S.B. Sinha of the Apex Court has in his JK Mathur Memorial Lecture on "Disability Law vis-à-vis Human Rights" (2005) 3 SCC Jour 1 has expressed his considered view on the subject matter of access to employment of physically challenged individuals. The same, as under, is worth citing:-

"(ii) Access to employment

Broadly speaking, employment for the Persons with disabilities (in short PWD) can be divided into two compartments, namely, (a) right of the PWD to secure employment, and (b) the rights of persons becoming disabled during employment.

Insofar as rights of the first kind are concerned, Section 33 of the Persons with Disabilities Act provides for 3% reservation of vacancies for persons with a disability, where 1% each is to be reserved for persons suffering from (1) blindness or low vision; (2) hearing impairment; and (3) locomotor disability or cerebral palsy. As per Section 36, where in any recruitment year any vacancy under Section 33 cannot be filled up due to non-availability of suitable candidates with disability, such vacancy is to be carried forward to the succeeding recruitment year. The reserved seats can be filled by persons other than the PWDs only when there is no PWD available for vacancy for the successive recruitment year. Under Section 41, the Act also provides incentives to public and private sector players who ensure that at least 5% of their workforce is constituted of PWDs.

However, experience has shown that these provision are hardly given effect to. This is because of the general misconception among non-disabled that persons with disabilities are not capable of doing any job properly. For example, in LIC of India Vs. Chief Commissioner. For Disabilities the view taken by LIC was that a person with 45% disability was incapable of performing his duties as a peon. The Delhi High Court in appeal from the decision of the Chief Commissioner found no substance in it and accordingly directed LIC to employ the PWD.

However, in all fairness, it must be stated that the situation described above does not exist only with respect to State entitles -even private organization fail to recognize the potential of PWDs and, therefore, reject them as candidates for employment. According to a research study conducted by the National Centre for promotion of employment for Disabled People (NCPEDP), out of the top 100 companies of India the percentage of employees with disabilities in the private sector was only 0.28%, and the percentage of PWD employees in multinationals was a meager 0.05%. It was also found that there was no company amongst the top 100 with employed even 2% of the workforce from the PWDs. As notes Sandra Swift Perrino of the National Council on Disability in the United States, "[w]hen industries retrench, these contingent workers are the first to lose their jobs. When there is growth, they are the last to be hired."


7. It is sanguinely hoped that the Government would take into account the above factors while reviewing the policy for compassionate appointment.

8. A copy of this order be made available to the Secretary, Ministry of Personnel, North Block, New Delhi for his consideration in this regard. It is purely left to the Government for a decision in this regard.

9. In so far as the case of the applicant is concerned, as stated at the very beginning, the limitations of the Tribunal being manifest, no

further orders could be passed in regard to the compassionate appointment of the applicant, save that the applicant may file a fresh representation, indicating the extent of financial resources he has including any balance out of the terminal benefits available with him and the extent of recurring expenses for the treatment, if any, of the visually challenged brother/sister, and if one such representation be made, the respondent may, taking into account the law laid down by the Apex Court in the case of **Govind Prakash Verma v. LIC of India** (*supra*) also consider the case and after liaising with the Ministry of Personnel, arrive at a just conclusion.

10. The OA is disposed of with the above observation. No cost.



Member (J)

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